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ACTION ALERT – NLRB Announces New Rules to Govern Union Requests for Witness Statements

On June 26, 2015, the National Labor Relations Board issued an important decision addressing an employer's obligation to provide witness statements under a union's information request.

In this new decision, *American Baptist Homes of the West*, 362 NLRB No. 139 (2015), the Board held that witness statements should be given to a requesting union unless the employer can show that it has a "substantial interest" in keeping the statements confidential.

Requests for witness statements will now be evaluated by a balancing test which looks at the union's need for the statements on the one hand and an employer's showing of a "legitimate and substantial confidentiality interest" on the other hand. The Board also noted that even where such a confidentiality interest is proven, the employer must seek an accommodation which would allow the information to be provided while protecting its concerns about disclosure. This test has been applied to other types of information since 2004 and will now be extended to witness statements.

This decision overrules a 1978 Board case which created a bright-line rule that witness statements are different from other types of information and so they are not subject to disclosure pursuant to a union's request.

The new rule will only be applied prospectively.

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